

No. 15005.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

THE FLINTKOTE COMPANY, a corporation,

*Appellant,*

*vs.*

ELMER LYSFJORD and WALTER R. WALDRON, doing business as aabeta co.,

*Appellees.*

---

Petition for Attorney's Fees on Appeal and Affidavit  
in Support Thereof.

---

FILED

JUL 17 1956

PAUL P. O'BRIEN, CLERK

ALFRED C. ACKERSON,

417 South Hill Street,

Los Angeles 13, California,

*Attorney for Petitioners and Appellees.*



## TOPICAL INDEX

	PAGE
Petition for Attorney's Fees on Appeal and Affidavit in Support Thereof .....	1
Affidavit in Support of Petition for Attorney's Fees on Appeal..	3

---

## TABLE OF AUTHORITIES CITED

CASES	PAGE
American Can Co. v. Bruce's Juices, Inc., 190 F. 2d 73.....	1
American Crystal Sugar Co. v. Mandeville Island Farms, Inc., (C. C. A. 9th) No. 12946.....	1
Jerome v. 20th Century-Fox Film Corporation, 165 F. 2d 784....	1
Laufenberg, Inc. v. Goldblatt Bros., Inc., 187 F. 2d 823.....	1
Sampsell v. Monell, 162 F. 2d 4.....	5



No. 15005.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

THE FLINTKOTE COMPANY, a corporation,

*Appellant,*

*vs.*

ELMER LYSFJORD and WALTER R. WALDRON, doing business as aabeta co.,

*Appellees.*

---

## Petition for Attorney's Fees on Appeal and Affidavit in Support Thereof.

---

This petition by plaintiffs (appellees herein) is filed simultaneously with the filing of their brief as appellees.

The Sherman Act provides for attorney's fees to a successful plaintiff. The trial court awarded \$25,000 to cover attorney's fees to the end of the trial. Attorney's fees for this appeal should be awarded by this Court.

*American Can Co. v. Bruce's Juices, Inc.*, 190 F. 2d 73, 74;

*Laufenberg, Inc. v. Goldblatt Bros., Inc.*, 187 F. 2d 823, 825;

*Jerome v. 20th Century-Fox Film Corporation*, 165 F. 2d 784, 785;

*American Crystal Sugar Co. v. Mandeville Island Farms, Inc.* (C. C. A. 9th), No. 12946—this Court.

This petition is based upon the record and briefs on file herein and upon the affidavit of Alfred C. Ackerson attached hereto and made a part hereof.

Wherefore, petitioner prays for attorney's fees for this appeal in the sum of \$13,000.

Respectfully submitted,

ALFRED C. ACKERSON,  
*Attorney for Petitioners and Appellees.*

**Affidavit in Support of Petition for Attorney's Fees  
on Appeal.**

STATE OF CALIFORNIA                 )  
  ) ss.  
COUNTY OF LOS ANGELES         )

ALFRED C. ACKERSON, being duly sworn, deposes and  
says:

Appellees herein simultaneously with the filing of their  
brief as appellees filed their Petition for Attorney's Fees  
on Appeal wherein it was pointed out that the Sherman  
Act provides for attorney's fees to a successful plaintiff;  
that the Court awarded \$25,000 to cover attorney's fees  
to the end of the proceedings in the trial court [R. 125];  
that attorney's fees for this appeal should be awarded by  
the Court; that until final argument in this appeal appel-  
lees will not know the full extent of such services, and  
that the full extent of such services will be presented to  
the Court by Affidavit at that time providing the said  
services vary substantially from the following actual and  
estimated time expended and to be expended.

However, in order to give appellant an opportunity to  
check the figures herein presented and to reply prior to  
the time of oral argument, we serve and file this affidavit  
at the present time.

Affiant at all times during the progress of this litigation  
was, and now is, an attorney at law duly admitted to prac-  
tice before the District Courts of the United States, in  
and for the Southern District of California, and in numer-  
ous other District Courts throughout the United States,  
the Court of Appeals for the Ninth Circuit, the Supreme  
Court of the United States, all of the state courts of Cali-  
fornia, and the District and Appellate Courts of the Dis-  
trict of Columbia.

Your affiant has been engaged in the practice of prosecuting and defending antitrust cases and related cases since in or about the year 1934.

Affiant has handled this cause of action on behalf of plaintiffs below from the original investigation of the facts prior to the filing of suit through the trial of the case.

The firm of attorneys representing appellant is a large, distinguished, experienced and able law firm.

The appellate record herein is extensive, and since appellant's Notice of Appeal its counsel have found it necessary to request of and receive from this Court an extension of time in which to file their Opening Brief and have found it necessary or expedient to obtain special permission from this Court to file a brief in excess of the number of pages permitted by the rules of this Court. Appellant's Opening Brief pursuant to permission of this Court contains 144 pages. The length of appellant's said Brief, manner in which the questions are posed therein, and the length of the appellate record have caused affiant to spend in excess of 350 hours in connection with this appeal and the matters involved therein since the entry of judgment and to and including the date of this affidavit, and affiant expects to spend and will be required to spend further time in preparing for argument and in arguing this appeal. Affiant has office records kept in the usual course of business showing the time spent in this appeal and such records are open to the inspection of counsel for appellant or their accountants at any reasonable time or times prior to the oral argument for the purpose of permitting appellant to check such time records.

Affiant's usual and regular charge for his services for matters of this kind are regularly based upon a minimum of \$35 per hour. Affiant recognizes that the time involved



is but one of the elements to be considered in the evaluation of an attorney's fee.

Affiant is familiar with the elements recognized in determining proper and reasonable attorney's fees by this Court (*Sampsell v. Monell*, 162 F. 2d 4, 6), and by the general, Federal, and State authorities on the subject.

Giving due consideration to each of the elements recognized by the above authorities in determining proper and reasonable attorney's fees, it is the studied opinion of affiant that the reasonable value of affiant's services in connection with this appeal, including the time that should be reasonably necessary to prepare for argument and appearance on oral argument and argument of this cause on oral argument is \$13,000.

WHEREFORE, affiant prays that this Court award appellees the sum of \$13,000 as attorney's fees on this appeal.

ALFRED C. ACKERSON

Subscribed and sworn to before me this 16th day of July, 1956.

JOYCE B. BALDWIN,  
*Notary Public in and for  
the County of Los Angeles,  
State of California.*

[Notarial Seal]

